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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 40

MIDSTATE HORTICULTURAL CO., INC.,
PETITIONER,

vs.

THE PENNSYLVANIA RAILROAD COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

PETITION FOR CERTIORARI FILED APRIL 12, 1943.

CERTIORARI GRANTED MAY 24, 1943.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No.

MID-STATE HORTICULTURAL CO., INC.,
PETITIONER,

vs.

THE PENNSYLVANIA RAILROAD COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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[fol. 1]

IN SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF FRESNO

No. 54060 Dept. 3

THE PENNSYLVANIA RAILROAD COMPANY, a corporation,
Plaintiff

vs.

MID-STATE HORTICULTURAL CO., INC., a corporation,
Defendant

FIRST AMENDED COMPLAINT—Filed July 15, 1936

Comes now the plaintiff and of course files this first amended complaint and for first cause of action alleges:

I

That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the state of Pennsylvania and engaged in the business of operating steam railroad lines as a common carrier.

II

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the state of California.

III

That the Atchison, Topeka & Santa Fe Railway Company is a corporation operating steam railroad lines as a common carrier.

IV

That on or about the 7th day of October, 1932, the de-
[fol. 2] fendant, as consignor, delivered to the Atchison, Topeka & Santa Fe Railway Company at Conejo, California, a carload of grapes loaded in car SFRD 17404 consigned to defendant at Kansas City, Missouri, to be shipped over the railroad lines of the Atchison, Topeka & Santa Fe Railway Company pursuant to the provisions of the uniform bill of lading executed by the defendant and

Atchison, Topeka & Santa Fe Railway Company, a copy of which is attached hereto marked Exhibit "A", hereby referred to and made a part hereof for all purposes.

V

That thereafter upon the order of defendant said carload of grapes was diverted to Jerome Distributing Co., Inc. at Belen, New Mexico; that thereafter said carload of grapes was diverted to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey.

VI

That said carload of grapes was transported over the steam railroad lines of the Atchison, Topeka & Santa Fe Railway Company, its connecting carriers and the railroad lines of the plaintiff and was delivered by the plaintiff to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey, on the 19th day of November, 1932, and that the plaintiff, the Atchison, Topeka & Santa Fe Railway Company, and its connecting carriers performed each and all of the terms and conditions of the said bill of lading on the part of the carriers to be kept and performed.

VII

[fol. 3] That at all times herein mentioned said defendant was the owner and the actual consignee of all of the said carload of grapes and said Jerome Distributing Co., Inc. was the agent of said defendant; that Jerome Distributing Co., Inc. signed and delivered to plaintiff prior to the delivery of said carload of grapes a notice dated November 19, 1932, a copy of which is attached hereto marked Exhibit "B", hereby referred to and made a part hereof for all purposes.

VIII

That the lawful freight, refrigeration, demurrage and other charges for the transportation, handling and delivery of said carload of grapes as herein alleged in accordance with the tariffs published and filed with the Inter-State Commerce Commission pursuant to the provisions of the Inter-State Commerce Act is the sum of $695.51.

IX

That on the 25th day of October, 1935, the defendant executed and delivered to the plaintiff a waiver of the

statute of limitations, a copy of which is attached hereto marked Exhibit "C", hereby referred to and made a part hereof for all purposes.

X

That on or about the 26th day of December, 1935, in accordance with the provisions of the Inter-State Commerce Act plaintiff demanded payment of said sum of $695.51 from the defendant and the defendant definitely refused to pay said sum or any part thereof and that the said sum of $695.51 is now due, owing and unpaid from [fol. 4] the defendant to the plaintiff together with interest thereon at the rate of 7% per annum from the 19th day of November, 1932.

And for a second cause of action against the defendant, plaintiff alleges:

I

That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania and engaged in the business of operating steam railroad lines as a common carrier.

II

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania and engaged in the business of operating steam railroad lines as a common carrier.

III

That the Atchison, Topeka & Santa Fe Railway Company is a corporation operating steam railroad lines as a common carrier.

IV

That on or about the 6th day of October, 1932, the defendant, as consignor, delivered to the Atchison, Topeka & Santa Fe Railway Company, at Conejo, California, a carload of grapes loaded in car SFRD 22471 consigned to defendant at Kansas City, Missouri, to be shipped over the railroad lines of the Atchison, Topeka & Santa Fe Railway Company, pursuant to the provisions of the uni-

form bill of lading executed by the defendant and Atchi-
[fol. 5] son, Topeka & Santa Fe Railway Company, a copy of which is attached hereto marked Exhibit "D", hereby referred to and made a part hereof for all purposes.

V

That thereafter upon the order of defendant said carload of grapes was diverted to Jerome Distributing Co., Inc. at Minneapolis, Minnesota; that thereafter said carload of grapes was diverted to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey.

VI

That said carload of grapes was transported over the steam railroad lines of the Atchison, Topeka & Santa Fe Railway Company, its connecting carriers and the railroad lines of the plaintiff and was delivered by the plaintiff to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey, on the 28th day of October, 1932, and that the plaintiff, the Atchison, Topeka & Santa Fe Railway Company, and its connecting carriers performed each and all of the terms and conditions of the said bill of lading on the part of the carriers to be kept and performed.

VII

That at all times herein mentioned said defendant was the owner and the actual consignee of all of the said carload of grapes and said Jerome Distributing Co., Inc. was the agent of said defendant; that Jerome Distributing Co., Inc. signed and delivered to plaintiff prior to the delivery of said carload of grapes a notice dated October 28, 1932, [fol. 6] a copy of which is attached hereto marked Exhibit "E", hereby referred to and made a part hereof for all purposes.

VIII

That the lawful freight, refrigeration, demurrage and other charges for the transportation, handling and delivery of said carload of grapes as herein alleged in accordance with the tariffs published and filed with the Inter-State Commerce Commission pursuant to the provisions of the Inter-State Commerce Act is the sum of $698.33.

IX

That on the 25th day of October, 1935, the defendant executed and delivered to the plaintiff a waiver of the statute of limitations, a copy of which is attached hereto marked Exhibit "C", hereby referred to and made a part hereof for all purposes.

X

That on or about the 26th day of December, 1935, in accordance with the provisions of the Inter-State Commerce Act, plaintiff demanded payment of said sum of $698.33 from the defendant and the defendant definitely refused to pay said sum or any part thereof and that the said sum of $698.33 is now due, owing and unpaid from the defendant to the plaintiff together with interest thereon at the rate of 7% per annum from the 28th day of October, 1932.

And for a third cause of action against the defendant, plaintiff alleges:

I

[fol. 7] That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania and engaged in the business of operating steam railroad lines as a common carrier.

II

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of California.

III

That the Southern Pacific Company is a corporation operating steam railroad lines as a common carrier.

IV

That on or about the 22nd day of October, 1932, the defendant, as consignor, delivered to the Southern Pacific Company at Cooperage Spur, California, a carload of grapes loaded in car PFE 13520 consigned to the defendant at Omaha, Nebraska, to be shipped over the railroad lines of the Southern Pacific Company pursuant to the provi-

sions of the uniform bill of lading executed by the defendant and Southern Pacific Company, a copy of which is attached hereto marked Exhibit "F", hereby referred to and made a part hereof for all purposes.

V

That thereafter upon the order of defendant said carload of grapes was diverted to Jerome Distributing Co., Inc. at Council Bluffs, Iowa; that thereafter said carload of grapes was diverted to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey.

[fol. 8] VI

That said carload of grapes was transported over the steam railroad lines of the Southern Pacific Company, its connecting carriers and the railroad lines of the plaintiff and was delivered by the plaintiff to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey, on the 2nd day of November, 1932, and that the plaintiff, the Southern Pacific Company, and its connecting carriers performed each and all of the terms and conditions of the said bill of lading on the part of the carriers to be kept and performed.

VII

That at all times herein mentioned said defendant was the owner and the actual consignee of all of the said carload of grapes and said Jerome Distributing Co., Inc. was the agent of said defendant; that Jerome Distributing Co., Inc. signed and delivered to plaintiff prior to the delivery of said carload of grapes a notice dated November 12, 1932, a copy of which is attached hereto marked Exhibit "G", hereby referred to and made a part hereof for all purposes.

VIII

That the lawful freight, refrigeration, demurrage and other charges for the transportation, handling and delivery of said carload of grapes as herein alleged in accordance with the tariffs published and filed with the Inter-State Commerce Commission pursuant to the provisions of the Inter-State Commerce Act is the sum of $617.58.

IX

[fol. 9] That on the 25th day of October, 1935, the defendant executed and delivered to the plaintiff a waiver of the

statute of limitations, a copy of which is attached hereto marked Exhibit "C", hereby referred to and made a part hereof for all purposes.

X

That on or about the 26th day of December, 1935, in accordance with the provisions of the Inter-State Commerce Act plaintiff demanded payment of said sum of $617.58 from the defendant and the defendant definitely refused to pay said sum or any part thereof and that the said sum of $617.58 is now due, owing and unpaid from the defendant to the plaintiff together with interest thereon at the rate of 7% per annum from the 2nd day of November, 1932.

And for a fourth cause of action against the defendant, plaintiff alleges:

I

That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania and engaged in the business of operating steam railroad lines as a common carrier.

II

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of California.

III

That the Southern Pacific Company is a corporation [fol. 10] operating steam railroad lines as a common carrier.

IV

That on or about the 22nd day of October, 1932, the defendant, as consignor, delivered to the Southern Pacific Company at Cooperage Spur, California, a carload of grapes loaded in car PFE 71996 consigned to defendant at Omaha, Nebraska, to be shipped over the railroad lines of the Southern Pacific Company pursuant to the provisions of the uniform bill of lading executed by the defendant and Southern Pacific Company, a copy of which is attached hereto marked Exhibit "H", hereby referred to and made a part hereof for all purposes.

V

That thereafter upon the order of defendant said carload of grapes was diverted to Jerome Distributing Co., Inc. at Council Bluffs, Iowa; that thereafter said carload of grapes was diverted to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey.

VI

That said carload of grapes was transported over the steam railroad lines of the Southern Pacific Company, its connecting carriers and the railroad lines of the plaintiff and was delivered by the plaintiff to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey, on the 1st day of November, 1932, and that the plaintiff, the Southern Pacific Company, and its connecting carriers performed each and all of the terms and conditions of the said bill of lading on the part of the carriers to be kept and performed.

[fol. 11]

VII

That at all times herein mentioned said defendant was the owner and the actual consignee of all of the said carload of grapes and said Jerome Distributing Co., Inc. was the agent of said defendant; that Jerome Distributing Co., Inc. signed and delivered to plaintiff prior to the delivery of said carload of grapes a notice dated November 4, 1932, a copy of which is attached hereto marked Exhibit "I", hereby referred to and made a part hereof for all purposes.

VIII

That the lawful freight, refrigeration, demurrage and other charges for the transportation, handling and delivery of said carload of grapes as herein alleged in accordance with the tariffs published and filed with the Inter-State Commerce Commission pursuant to the provisions of the Inter-State Commerce Act is the sum of $619.18.

IX

That on the 25th day of October, 1935, the defendant executed and delivered to the plaintiff a waiver of the statute of limitations, a copy of which is attached hereto marked Exhibit "C", hereby referred to and made a part hereof for all purposes.

X

That on or about the 26th day of December, 1935, in accordance with the provisions of the Inter-State Commerce Act plaintiff demanded payment of said sum of $619.18 from the defendant and the defendant definitely refused to [fol. 12] pay said sum or any part thereof and that the said sum of $619.18 is now due, owing and unpaid from the defendant to the plaintiff together with interest thereon at the rate of 7% per annum from the 1st day of November, 1932.

And for a fifth cause of action against the defendant, plaintiff alleges:

I

That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania and engaged in the business of operating steam railroad lines as a common carrier.

II

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of California.

III

That the Atchison, Topeka & Santa Fe Railway Company is a corporation operating steam railroad lines as a common carrier.

IV

That on or about the 22nd day of October, 1932, the defendant, as consignor, delivered to the Atchison, Topeka & Santa Fe Railway Company at New House, California, a carload of grapes loaded in car SFRD 18007 consigned to defendant at Kansas City, Missouri, to be shipped over the railroad lines of the Atchison, Topeka & Santa Fe Railway Company pursuant to the provisions of the uniform bill of lading executed by the defendant the Atchison, Topeka & [fol. 13] Santa Fe Railway Company, a copy of which is attached hereto marked Exhibit "J", hereby referred to and made a part hereof for all purposes.

V

That thereafter upon the order of defendant said carload of grapes was diverted to Jerome Distributing Co., Inc. at

Belen, New Mexico; that thereafter said carload of grapes was diverted to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey.

VI

That said carload of grapes was transported over the steam railroad lines of the Atchison, Topeka & Santa Fe Railway Company, its connecting carriers and the railroad lines of the plaintiff and was delivered by the plaintiff to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey, on the 1st day of November, 1932, and that the plaintiff, the Atchison, Topeka & Santa Fe Railway Company, and its connecting carriers performed each and all of the terms and conditions of the said bill of lading on the part of the carriers to be kept and performed.

VII

That at all times herein mentioned said defendant was the owner and the actual consignee of all of the said carload of grapes and said Jerome Distributing Co., Inc. was the agent of said defendant; that Jerome Distributing Co., Inc. signed and delivered to plaintiff prior to the delivery of said carload of grapes a notice dated November 4, 1932, a [fol. 14] copy of which is attached hereto marked Exhibit "K", hereby referred to and made a part hereof for all purposes.

VIII

That the lawful freight, refrigeration, demurrage and other charges for the transportation, handling and delivery of said carload of grapes as herein alleged in accordance with the tariffs published and filed with the Inter-State Commerce Commission pursuant to the provisions of the Inter-State Commerce Act is the sum of $621.58.

IX

That on the 25th day of October, 1935, the defendant executed and delivered to the plaintiff a waiver of the statute of limitations, a copy of which is attached hereto marked Exhibit "C", hereby referred to and made a part hereof for all purposes.

X

That on or about the 26th day of December, 1935, in accordance with the provisions of the Inter-State Commerce

Act plaintiff demanded payment of said sum of $621.58 from the defendant and the defendant definitely refused to pay said sum or any part thereof and that the said sum of $621.58 is now due, owing and unpaid from the defendant to the plaintiff together with interest thereon at the rate of 7% per annum from the 1st day of November, 1932.

And for a sixth cause of action against the defendant, plaintiff alleges:

I

[fol. 15] That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania and engaged in the business of operating steam railroad lines as a common carrier.

II

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of California.

III

That the Southern Pacific Company is a corporation operating steam railroad lines as a common carrier.

IV

That on or about the 9th day of October, 1932, the defendant, as consignor, delivered to the Southern Pacific Company at Quality, California, a carload of grapes loaded in car PFE 28824 consigned to defendant at Omaha, Nebraska, to be shipped over the railroad lines of the Southern Pacific Company pursuant to the provisions of the uniform bill of lading executed by the defendant and Southern Pacific Company, a copy of which is attached hereto marked Exhibit "L", hereby referred to and made a part hereof for all purposes.

V

That thereafter upon the order of defendant said carload of grapes was diverted to Jerome Distributing Co., Inc. at Council Bluffs, Iowa; that thereafter said carload of grapes was diverted to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey.

[fol. 16]

VI

That said carload of grapes was transported over the steam railroad lines of the Southern Pacific Company, its connecting carriers and the railroad lines of the plaintiff and was delivered by the plaintiff to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey, on the 21st day of November, 1932, and that the plaintiff, the Southern Pacific Company, and its connecting carriers performed each and all of the terms and conditions of the said bill of lading on the part of the carriers to be kept and performed.

VII

That at all times herein mentioned said defendant was the owner and the actual consignee of all of the said carload of grapes and said Jerome Distributing Co., Inc. was the agent of said defendant; that Jerome Distributing Company signed and delivered to plaintiff prior to the delivery of said carload of grapes a notice dated November 19, 1932, a copy of which is attached hereto marked Exhibit "M", hereby referred to and made a part hereof for all purposes.

VIII

That the lawful freight, refrigeration, demurrage and other charges for the transportation, handling and delivery of said carload of grapes as herein alleged in accordance with the tariffs published and filed with the Inter-State Commerce Commission pursuant to the provisions of the Inter-State Commerce Act is the sum of $667.33.

IX

[fol. 17] That on the 25th day of October, 1935, the defendant executed and delivered to the plaintiff a waiver of the statute of limitations, a copy of which is attached hereto marked Exhibit "C", hereby referred to and made a part hereof for all purposes.

X

That on or about the 26th day of December, 1935, in accordance with the provisions of the Inter-State Commerce Act plaintiff demanded payment of said sum of $667.33 from the defendant and the defendant definitely refused to pay said sum or any part thereof and that the said sum of

$667.33 is now due, owing and unpaid from the defendant to the plaintiff together with interest thereon at the rate of 7% per annum from the 21st day of November, 1932.

And for a seventh cause of action against the defendant, plaintiff alleges:

I

That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania and engaged in the business of operating steam railroad lines as a common carrier.

II

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of California.

III

That the Southern Pacific Company is a corporation op- [fol. 18] erating steam railroad lines as a common carrier.

IV

That on or about the 8th day of October, 1932, the defendant, as consignor, delivered to the Southern Pacific Company at Quality, California, a carload of grapes loaded in car PFE 36495 consigned to defendant at Omaha, Nebraska, to be shipped over the railroad lines of the Southern Pacific Company pursuant to the provisions of a uniform bill of lading executed by defendant and Southern Pacific Company, a copy of which is attached hereto marked Exhibit "N", hereby referred to and made a part hereof for all purposes.

V

That thereafter upon the order of defendant said carload of grapes was diverted to Jerome Distributing Co., Inc. at Council Bluffs, Iowa; that thereafter said carload of grapes was diverted to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey.

VI

That said carload of grapes was transported over the steam railroad lines of the Southern Pacific Company, its

connecting carriers and the railroad lines of the plaintiff and was delivered by the plaintiff to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey, on the 18th day of November, 1932, and that the plaintiff, the Southern Pacific Company, and its connecting carriers performed each and all of the terms and conditions of the said bill of lading on the part of the carriers to be kept and performed.

[fol. 19] VII

That the lawful freight, refrigeration, demurrage and other charges for the transportation, handling and delivery of said carload of grapes as herein alleged in accordance with the tariffs published and filed with the Inter-State Commerce Commission pursuant to the provisions of the Inter-State Commerce Act is the sum of $687.73.

VIII

That on the 25th day of October, 1935, the defendant executed and delivered to the plaintiff a waiver of the statute of limitations, a copy of which is attached hereto marked Exhibit "C", hereby referred to and made a part hereof for all purposes.

IX

That on or about the 26th day of December, 1935, in accordance with the provisions of the Inter-State Commerce Act plaintiff demanded payment of said sum of $687.73 from the defendant and the defendant definitely refused to pay said sum or any part thereof and that the said sum of $687.73 is now due, owing and unpaid from the defendant to the plaintiff together with interest thereon at the rate of 7% per annum from the 18th day of November, 1932.

And for an eighth cause of action against the defendant, plaintiff alleges:

I

That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of [fol. 20] Pennsylvania and engaged in the business of operating steam railroad lines as a common carrier.

II

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of California.

III

That the Southern Pacific Company is a corporation operating steam railroad lines as a common carrier.

IV

That on or about the 8th day of October, 1932, the defendant, as consignor, delivered to the Southern Pacific Company at Quality, California, a carload of grapes loaded in car PFE 24375 consigned to defendant at Omaha, Nebraska, to be shipped over the railroad lines of the Southern Pacific Company pursuant to the provisions of a uniform bill of lading executed by defendant and the Southern Pacific Company, a copy of which is attached hereto marked Exhibit "O", hereby referred to and made a part hereof for all purposes.

V

That thereafter upon the order of defendant said carload of grapes was diverted to Jerome Distributing Co., Inc. at Council Bluffs, Iowa; that thereafter said carload of grapes was diverted to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey.

VI

That said carload of grapes was transported over the [fol. 21] steam railroad lines of the Southern Pacific Company, its connecting carriers and the railroad lines of the plaintiff and was delivered by the plaintiff to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey, on the 18th day of November, 1932, and that the plaintiff, the Southern Pacific Company, and its connecting carriers performed each and all of the terms and conditions of the said bill of lading on the part of the carriers to be kept and performed.

VII

That the lawful freight, refrigeration, demurrage and other charges for the transportation, handling and delivery of said carload of grapes as herein alleged in accordance

with the tariffs published and filed with the Inter-State Commerce Commission pursuant to the provisions of the Inter-State Commerce Act is the sum of $683.83.

VIII

That on the 25th day of October, 1935, the defendant executed and delivered to the plaintiff a waiver of the statute of limitations, a copy of which is attached hereto marked Exhibit "C", hereby referred to and made a part hereof for all purposes.

IX

That on or about the 26th day of December, 1935, in accordance with the provisions of the Inter-State Commerce Act plaintiff demanded payment of said sum of $683.83 from the defendant and the defendant definitely refused to pay said sum or any part thereof and that the said sum of $683.83 [fol. 22] is now due, owing and unpaid from the defendant to the plaintiff together with interest thereon at the rate of 7% per annum from the 18th day of November, 1932.

And for a ninth cause of action against the defendant, plaintiff alleges:

I

That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania and engaged in the business of operating steam railroad lines as a common carrier.

II

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of California.

III

That the Southern Pacific Company is a corporation operating steam railroad lines as a common carrier.

IV

That on or about the 22nd day of October, 1932, the defendant, as consignor, delivered to the Southern Pacific Company at Quality, California, a carload of grapes loaded in car PFE 1478 consigned to defendant at Denver, Colorado, to be shipped over the railroad lines of the Southern

Pacific Company pursuant to the provisions of a uniform bill of lading executed by defendant and Southern Pacific Company, a copy of which is attached hereto marked Exhibit "PP", hereby referred to and made a part hereof for all purposes.

V

[fol. 23] That thereafter upon the order of defendant said carload of grapes was diverted to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey.

VI

That said carload of grapes was transported over the steam railroad lines of the Southern Pacific Company, its connecting carriers and the railroad lines of the plaintiff and was delivered by the plaintiff to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey, on the 1st day of November, 1932, and that the plaintiff, the Southern Pacific Company, and its connecting carriers performed each and all of the terms and conditions of the said bill of lading on the part of the carriers to be kept and performed.

VII

That the lawful freight, refrigeration, demurrage and other charges for the transportation, handling and delivery of said carload of grapes as herein alleged in accordance with the tariffs published and filed with the Inter-State Commerce Commission pursuant to the provisions of the Inter-State Commerce Act is the sum of $660.43.

VIII

That on the 25th day of October, 1935, the defendant executed and delivered to the plaintiff a waiver of the statute of limitations, a copy of which is attached hereto marked Exhibit "C", hereby referred to and made a part hereof for all purposes.

[fol. 24] That on or about the 26th day of December, 1935, in accordance with the provisions of the Inter-State Commerce Act plaintiff demanded payment of said sum of $660.43 from the defendant and the defendant definitely refused to pay said sum or any part thereof and that the said sum of $660.43 is now due, owing and unpaid from the defendant to the plaintiff together with interest thereon at

the rate of 7% per annum from the 1st day of November, 1932.

And for a tenth cause of action against the defendant, plaintiff alleges:

I

That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania and engaged in the business of operating steam railroad lines as a common carrier.

II

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of California.

III

That the Southern Pacific Company is a corporation operating steam railroad lines as a common carrier.

IV

That on or about the 29th day of October, 1932, the defendant, as consignor, delivered to the Southern Pacific Company at Quality, California, a carload of grapes loaded in car PFE 71971 consigned to defendant at Omaha, [fol. 25] Nebraska, to be shipped over the railroad lines of the Southern Pacific Company pursuant to the provisions of a uniform bill of lading executed by defendant and the Southern Pacific Company, a copy of which is attached hereto marked Exhibit "Q", hereby referred to and made a part hereof for all purposes.

V

That thereafter upon the order of defendant said carload of grapes was diverted to Jerome Distributing Co., Inc. at Chicago, Illinois; that thereafter said carload of grapes was diverted to Jerome Distributing Co., Inc. at Pier 29, New York City, New York.

VI

That said carload of grapes was transported over the steam railroad lines of the Southern Pacific Company, its connecting carriers and the railroad lines of the plaintiff and was delivered by the plaintiff to Jerome Distributing

Co., Inc. at Pier 29, New York City, New York, on the 22nd day of November, 1932, and that the plaintiff, the Southern Pacific Company, and its connecting carriers performed each and all of the terms and conditions of the said bill of lading on the part of the carriers to be kept and performed.

VII

That the lawful freight, refrigeration, demurrage and other charges for the transportation, handling and delivery of said carload of grapes as herein alleged in accordance with the tariffs published and filed with the Inter-State Commerce Commission pursuant to the provisions [fol. 26] of the Inter-State Commerce Act is the sum of $589.38.

VIII

That on the 25th day of October, 1935, the defendant executed and delivered to the plaintiff a waiver of the statute of limitations, a copy of which is attached hereto marked Exhibit "C", hereby referred to and made a part hereof for all purposes.

IX

That on or about the 26th day of December, 1935, in accordance with the provisions of the Inter-State Commerce Act plaintiff demanded payment of said sum of $589.38 from the defendant and the defendant definitely refused to pay said sum or any part thereof and that the said sum of $589.38 is now due, owing and unpaid from the defendant to the plaintiff together with interest thereon at the rate of 7% per annum from the 22nd day of November, 1932.

And for an eleventh cause of action against the defendant, plaintiff alleges:

I

That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania and engaged in the business of operating steam railroad lines as a common carrier.

II

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of [fol. 27] California.

III

That the Southern Pacific Company is a corporation operating steam railroad lines as a common carrier.

IV

That on or about the 6th day of October, 1932, the defendant, as consignor, delivered to the Southern Pacific Company at Quality, California, a carload of grapes loaded in car PFE 36105 consigned to defendant at Omaha, Nebraska, to be shipped over the railroad lines of the Southern Pacific Company pursuant to the provisions of a uniform bill of lading executed by defendant and Southern Pacific Company, a copy of which is attached hereto marked Exhibit "R", hereby referred to and made a part hereof for all purposes.

V

That thereafter upon the order of defendant said carload of grapes was diverted to Jerome Distributing Co., Inc. at Council Bluffs, Iowa; that thereafter said carload of grapes was diverted to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey.

VI

That said carload of grapes was transported over the steam railroad lines of the Southern Pacific Company, its connecting carriers and the railroad lines of the plaintiff and was delivered by the plaintiff to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey, on the 28th day of October, 1932, and that the plaintiff, the Southern Pacific Company, and its connecting carriers per- [fol. 28] formed each and all of the terms and conditions of the said bill of lading on the part of the carriers to be kept and performed.

VII

That the lawful freight, refrigeration, demurrage and other charges for the transportation, handling and delivery of said carload of grapes as herein alleged in accordance with the tariffs published and filed with the Inter-State Commerce Commission pursuant to the provisions of the Inter-State Commerce Act is the sum of $689.73.

VIII

That on the 25th day of October, 1935, the defendant executed and delivered to the plaintiff a waiver of the statute of limitations, a copy of which is attached hereto marked Exhibit "C", hereby referred to and made a part hereof for all purposes.

IX

That on or about the 26th day of December, 1935, in accordance with the provisions of the Inter-State Commerce Act plaintiff demanded payment of said sum of $689.73 from the defendant and the defendant definitely refused to pay said sum or any part thereof and that the said sum of $689.73 is now due, owing and unpaid from the defendant to the plaintiff together with interest thereon at the rate of 7% per annum from the 28th day of October, 1932.

And for a twelfth cause of action against the defendant, plaintiff alleges:

[fol. 29]

I

That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania and engaged in the business of operating steam railroad lines as a common carrier.

II

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of California.

III

That the Southern Pacific Company is a corporation operating steam railroad lines as a common carrier.

IV

That on or about the 22nd day of October, 1932, the defendant, as consignor, delivered to the Southern Pacific Company at Quality, California; a carload of grapes loaded in car PFE 14745 consigned to defendant at Denver, Colorado, to be shipped over the railroad lines of the Southern Pacific Company pursuant to the provisions of a uniform bill of lading executed by defendant and Southern Pacific Company, a copy of which is attached hereto marked Ex-

hibit "S", hereby referred to and made a part hereof for all purposes.

V

That thereafter upon the order of defendant said carload of grapes was diverted to Jerome Distributing Co., Inc. at Denver, Colorado; that thereafter said carload of grapes was diverted to Jerome Distributing Co., Inc. at Manhattan [fol. 30] Produce Yards, New Jersey.

VI

That said carload of grapes was transported over the steam railroad lines of the Southern Pacific Company, its connecting carriers and the railroad lines of the plaintiff and was delivered by the plaintiff to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey, on the 1st day of November, 1932, and that the plaintiff, the Southern Pacific Company, and its connecting carriers performed each and all of the terms and conditions of the said bill of lading on the part of the carriers to be kept and performed.

VII

That the lawful freight, refrigeration, demurrage and other charges for the transportation, handling and delivery of said carload of grapes as herein alleged in accordance with the tariffs published and filed with the Inter-State Commerce Commission pursuant to the provisions of the Inter-State Commerce Act is the sum of $662.83.

VIII

That on the 25th day of October, 1935, the defendant executed and delivered to the plaintiff a waiver of the statute of limitations, a copy of which is attached hereto marked Exhibit "C", hereby referred to and made a part hereof for all purposes.

IX

That on or about the 26th day of December, 1935, in accordance with the provisions of the Inter-State Commerce [fol. 31] Act plaintiff demanded payment of said sum of $662.83 from the defendant and the defendant definitely refused to pay said sum or any part thereof and that the said sum of $662.83 is now due, owing and unpaid from the defendant to the plaintiff together with interest thereon

at the rate of 7% per annum from the 1st day of November, 1932.

And for a thirteenth cause of action against the defendant, plaintiff alleges:

I

That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania and engaged in the business of operating steam railroad lines as a common carrier.

II

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of California.

III

That the Southern Pacific Company is a corporation operating steam railroad lines as a common carrier.

IV

That on or about the 7th day of October, 1932, the defendant, as consignor, delivered to the Southern Pacific Company at Quality, California, a carload of grapes loaded in car PFE 13607 consigned to defendant at Omaha, Nebraska, to be shipped over the railroad lines of the Southern Pacific Company pursuant to the provisions of a uniform bill of [fol. 32] lading executed by defendant and the Southern Pacific Company, a copy of which is attached hereto marked Exhibit "T", hereby referred to and made a part hereof for all purposes.

V

That thereafter upon the order of defendant said carload of grapes was diverted to Jerome Distributing Co., Inc. at Council Bluffs, Iowa; that thereafter said carload of grapes was diverted to Jerome Distributing Co., Inc. at Manhattan Piers, New Jersey.

VI

That said carload of grapes was transported over the steam railroad lines of the Southern Pacific Company, its connecting carriers and the railroad lines of the plaintiff and was delivered by the plaintiff to Jerome Distributing Co., Inc. at Manhattan Piers, New Jersey, on the 18th day

of November, 1932, and that the plaintiff, the Southern Pacific Company, and its connecting carriers performed each and all of the terms and conditions of the said bill of lading on the part of the carriers to be kept and performed.

VII

That the lawful freight, refrigeration, demurrage and other charges for the transportation, handling and delivery of said carload of grapes as herein alleged in accordance with the tariffs published and filed with Inter-State Commerce Commission pursuant to the provisions of the Inter-State Commerce Act is the sum of $670.33.

VIII

[fol. 33] That on the 25th day of October, 1935, the defendant executed and delivered to the plaintiff a waiver of the statute of limitations, a copy of which is attached hereto marked Exhibit "C", hereby referred to and made a part hereof for all purposes.

IX

That on or about the 26th day of December, 1935, in accordance with the provisions of the Inter-State Commerce Act plaintiff demanded payment of said sum of $670.33 from the defendant and the defendant definitely refused to pay said sum or any part thereof and that the said sum of $670.33 is now due, owing and unpaid from the defendant to the plaintiff together with interest thereon at the rate of 7% per annum from the 18th day of November, 1932.

And for a fourteenth cause of action against the defendant, plaintiff alleges:

I

That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania and engaged in the business of operating steam railroad lines as a common carrier.

II

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of California.

III

That the Southern Pacific Company is a corporation [fol. 34] operating steam railroad lines as a common carrier.

IV

That on or about the 7th day of October, 1932, the defendant, as consignor, delivered to the Southern Pacific Company at Quality,California, a carload of grapes loaded in car PFE 15847 consigned to defendant at Omaha, Nebraska, to be shipped over the railroad lines of the Southern Pacific Company pursuant to the provisions of a uniform bill of lading executed by defendant and the Southern Pacific Company, a copy of which is attached hereto marked Exhibit "U", hereby referred to and made a part hereof for all purposes.

V

That thereafter upon the order of defendant said carload of grapes was diverted to Jerome Distributing Co., Inc. at Council Bluffs, Iowa; that thereafter said carload of grapes was diverted to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey.

VI

That said carload of grapes was transported over the steam railroad lines of the Southern Pacific Company, its connecting carriers and the railroad lines of the plaintiff and was delivered by the plaintiff to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey, on the 18th day of November, 1932, and that the plaintiff, the Southern Pacific Company, and its connecting carriers performed each and all of the terms and conditions of the said bill of lading on the part of the carriers to be kept and performed.

[fol. 35]

VII

That the lawful freight, refrigeration, demurrage and other charges for the transportation, handling and delivery of said carload of grapes as herein alleged in accordance with the tariffs published and filed with the Inter-State Commerce Commission pursuant to the provisions of the Inter-State Commerce Act is the sum of $658.13.

VIII

That on the 25th day of October, 1935, the defendant executed and delivered to the plaintiff a waiver of the statute of limitations, a copy of which is attached hereto marked Exhibit "C", hereby referred to and made a part hereof for all purposes.

IX

That on or about the 26th day of December, 1935, in accordance with the provisions of the Inter-State Commerce Act plaintiff demanded payment of said sum of $658.13 from the defendant and the defendant definitely refused to pay said sum or any part thereof and that the said sum of $658.13 is now due, owing and unpaid from the defendant to the plaintiff together with interest thereon at the rate of 7% per annum from the 18th day of November, 1932.

And for a fifteenth cause of action against the defendant, plaintiff alleges:

I

That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of [fol. 36] Pennsylvania and engaged in the business of operating steam railroad lines as a common carrier.

II

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of California.

III

That the Southern Pacific Company is a corporation operating steam railroad lines as a common carrier.

IV

That on or about the 8th day of October, 1932, the defendant, as consignor, delivered to the Southern Pacific Company at Quality, California, a carload of grapes loaded in car PFE 71402 consigned to defendant at Omaha, Nebraska, to be shipped over the railroad lines of the Southern Pacific Company pursuant to the provisions of a uniform bill of lading executed by defendant and the Southern Pacific Company, a copy of which is attached hereto marked

Exhibit "V", hereby referred to and made a part hereof for all purposes.

V

That thereafter upon the order of defendant said carload of grapes was diverted to Jerome Distributing Co., Inc. at Council Bluffs; that thereafter said carload of grapes was diverted to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey.

VI

That said carload of grapes was transported over the [fol. 37] steam railroad lines of the Southern Pacific Company, its connecting carriers and the railroad lines of the plaintiff and was delivered by the plaintiff to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey, on the 18th day of November, 1932, and that the plaintiff, the Southern Pacific Company, and its connecting carriers performed each and all of the terms and conditions of the said bill of lading on the part of the carriers to be kept and performed.

VII

That the lawful freight, refrigeration, demurrage and other charges for the transportation, handling and delivery of said carload of grapes as herein alleged in accordance with the tariffs published and filed with the Inter-State Commerce Commission pursuant to the provisions of the Inter-State Commerce Act is the sum of $682.63.

VIII

That on the 25th day of October, 1935, the defendant executed and delivered to the plaintiff a waiver of the statute of limitations, a copy of which is attached hereto marked Exhibit "C", hereby referred to and made a part hereof for all purposes.

IX

That on or about the 26th day of December, 1935, in accordance with the provisions of the Inter-State Commerce Act plaintiff demanded payment of said sum of $682.63 from the defendant and the defendant definitely refused to pay said sum or any part thereof and that the said sum of [fol. 38] $682.63 is now due, owing and unpaid from the

defendant to the plaintiff together with interest thereon at the rate of 7% per annum from the 18th day of November, 1932.

And for a sixteenth cause of action against the defendant, plaintiff alleges:

I

That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania and engaged in the business of operating steam railroad lines as a common carrier.

II

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of California.

III

That the Southern Pacific Company is a corporation operating steam railroad lines as a common carrier.

IV

That on or about the 27th day of October, 1932, the defendant, as consignor, delivered to the Southern Pacific Company at Quality, California, a carload of grapes loaded in car PFE 35599 consigned to defendant at Manhattan Produce Yards, New Jersey, to be shipped over the railroad lines of the Southern Pacific Company pursuant to the provisions of a uniform bill of lading executed by defendant and the Southern Pacific Company, a copy of which is attached hereto marked Exhibit "W", hereby referred to and made a part hereof for all purposes.

[fol. 39] That thereafter upon the order of defendant said carload of grapes was diverted to Jerome Distributing Co., Inc. at Chicago, Illinois; that thereafter said carload of grapes was diverted to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey.

VI

That said carload of grapes was transported over the steam railroad lines of the Southern Pacific Company, its connecting carriers and the railroad lines of the plaintiff and was delivered by the plaintiff to Jerome Distributing

Co., Inc. at Manhattan Produce Yards, New Jersey, on the 18th day of November, 1932, and that the plaintiff, the Southern Pacific Company, and its connecting carriers performed each and all of the terms and conditions of the said bill of lading on the part of the carriers to be kept and performed.

VII

That the lawful freight, refrigeration, demurrage and other charges for the transportation, handling and delivery of said carload of grapes as herein alleged in accordance with the tariffs published and filed with the Inter-State Commerce Commission pursuant to the provisions of the Inter-State Commerce Act is the sum of $638.33.

VIII

That on the 25th day of October, 1935, the defendant executed and delivered to the plaintiff a waiver of the statute of limitations, a copy of which is attached hereto marked [fol. 40] Exhibit "C", hereby referred to and made a part hereof for all purposes.

IX

That on or about the 26th day of December, 1935, in accordance with the provisions of the Inter-State Commerce Act plaintiff demanded payment of said sum of $638.33 from the defendant and the defendant definitely refused to pay said sum or any part thereof and that the said sum of $638.33 is now due, owing and unpaid from the defendant to the plaintiff together with interest thereon at the rate of 7% per annum from the 18th day of November, 1932.

And for a seventeenth cause of action against the defendant, plaintiff alleges:

I

That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania and engaged in the business of operating steam railroad lines as a common carrier.

II

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of California.

III

That the Southern Pacific Company is a corporation operating steam railroad lines as a common carrier.

IV

That on or about the 31st day of October, 1932, the defend- [fol. 41] ant, as consignor, delivered to the Southern Pacific Company at Quality, California, a carload of grapes loaded in car PFE 71097 consigned to defendant at Omaha, Nebraska, to be shipped over the railroad lines of the Southern Pacific Company pursuant to the provisions of a uniform bill of lading executed by defendant and the Southern Pacific Company, a copy of which is attached hereto marked Exhibit "X", hereby referred to and made a part hereof for all purposes.

V

That thereafter upon the order of defendant said carload of grapes was diverted to Jerome Distributing Co., Inc. at Chicago, Illinois; that thereafter said carload of grapes was diverted to Jero. e Distributing Co., Inc. at Pier 28, New York City, New York.

VI

That said carload of grapes was transported over the steam railroad lines of the Southern Pacific Company, its connecting carriers and the railroad lines of the plaintiff and was delivered by the plaintiff to Jerome Distributing Co., Inc. at Pier 28, New York City, New York, on the 21st day of November, 1932, and that the plaintiff, the Southern Pacific Company, and its connecting carriers performed each and all of the terms and conditions of the said bill of lading on the part of the carriers to be kept and performed.

VII

That the lawful freight, refrigeration, demurrage and other charges for the transportation, handling and delivery [fol. 42] of said carload of grapes as herein alleged in accordance with the tariffs published and filed with the Inter-State Commerce Commission pursuant to the provisions of the Inter-State Commerce Act is the sum of $583.38.

VIII

That on the 25th day of October, 1935, the defendant executed and delivered to the plaintiff a waiver of the statute of limitations, a copy of which is attached hereto marked Exhibit "C", hereby referred to and made a part hereof for all purposes.

IX

That on or about the 26th day of December, 1935, in accordance with the provisions of the Inter-State Commerce Act plaintiff demanded payment of said sum of $583.38 from the defendant and the defendant definitely refused to pay said sum or any part thereof and that the said sum of $583.38 is now due, owing and unpaid from the defendant to the plaintiff together with interest thereon at the rate of 7% per annum from the 21st day of November, 1932.

And for an eighteenth cause of action against the defendant, plaintiff alleges:

I

That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania and engaged in the business of operating steam railroad lines as a common carrier.

II

[fol. 43] That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of California.

III

That the Southern Pacific Company is a corporation operating steam railroad lines as a common carrier.

IV

That on or about the 23rd day of October, 1932, the defendant, as consignor, delivered to the Southern Pacific Company at Quality, California, a carload of grapes loaded in car PFE 14118 consigned to defendant at Denver, Colorado, to be shipped over the railroad lines of the Southern Pacific Company pursuant to the provisions of a uniform bill of lading executed by defendant and Southern Pacific

Company, a copy of which is attached hereto marked Exhibit "Y", hereby referred to and made a part hereof for all purposes.

V

That thereafter upon the order of defendant said carload of grapes was diverted to Jerome Distributing Co., Inc. at Denver, Colorado; that thereafter said carload of grapes was diverted to Jerome Distributing Co., Inc. at Manhattan Piers, New Jersey.

VI

That said carload of grapes was transported over the steam railroad lines of the Southern Pacific Company, its connecting carriers and the railroad lines of the plaintiff and was delivered by the plaintiff to Jerome Distributing Co., [fol. 44] Inc. at Manhattan Piers, New Jersey, on the 17th day of November, 1932, and that the plaintiff, the Southern Pacific Company, and its connecting carriers performed each and all of the terms and conditions of the said bill of lading on the part of the carriers to be kept and performed.

VII

That the lawful freight, refrigeration, demurrage and other charges for the transportation, handling and delivery of said carload of grapes as herein alleged in accordance with the tariffs published and filed with the Inter-State Commerce Commission pursuant to the provisions of the Inter-State Commerce Act is the sum of $579.03.

VIII

That on the 25th day of October, 1935, the defendant executed and delivered to the plaintiff a waiver of the statute of limitations, a copy of which is attached hereto marked Exhibit "C", hereby referred to and made a part hereof for all purposes.

IX

That on or about the 26th day of December, 1935, in accordance with the provisions of the Inter-State Commerce Act plaintiff demanded payment of said sum of $579.03 from the defendant and the defendant definitely refused to pay said sum or any part thereof and that the said sum of $579.03 is now due, owing and unpaid from the

defendant to the plaintiff together with interest thereon at the rate of 7% per annum from the 17th day of November, 1932.

[fol. 45] And for a nineteenth cause of action against the defendant, plaintiff alleges:

I

That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania and engaged in the business of operating steam railroad lines as a common carrier.

II

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of California.

III

That the Southern Pacific Company is a corporation steam railroad lines as a common carrier.

IV

That on or about the 7th day of October, 1932, the defendant, as consignor, delivered to the Southern Pacific Company at Quality, California, a carload of grapes loaded in car PFE 16444 consigned to defendant at Omaha, Nebraska, to be shipped over the railroad lines of the Southern Pacific Company pursuant to the provisions of a uniform bill of lading executed by defendant and the Southern Pacific Company, a copy of which is attached hereto marked Exhibit "Z", hereby referred to and made a part hereof for all purposes.

V

That thereafter upon the order of defendant said carload of grapes was diverted to Jerome Distributing Co., Inc. [fol. 46] at Council Bluffs, Iowa; that thereafter said carload of grapes was diverted to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey.

VI

That said carload of grapes was transported over the steam railroad lines of the Southern Pacific Company, its

connecting carriers and the railroad lines of the plaintiff and was delivered by the plaintiff to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey, on the 18th day of November, 1932, and that the plaintiff, the Southern Pacific Company, and its connecting carriers performed each and all of the terms and conditions of the said bill of lading on the part of the carriers to be kept and performed.

VII.

That the lawful freight, refrigeration, demurrage and other charges for the transportation, handling and delivery of said carload of grapes as herein alleged in accordance with the tariffs published and filed with the Inter-State Commerce Commission pursuant to the provisions of the Inter-State Commerce Act is the sum of $671.53.

VIII

That on the 25th day of October, 1935; the defendant executed and delivered to the plaintiff a waiver of the statute of limitations, a copy of which is attached hereto marked Exhibit "C", hereby referred to and made a part hereof for all purposes.

[fol. 47] That on or about the 26th day of December, 1935, in accordance with the provisions of the Inter-State Commerce Act plaintiff demanded payment of said sum of $671.53 from the defendant and the defendant definitely refused to pay said sum or any part thereof and that the said sum of $671.53 is now due, owing and unpaid from the defendant to the plaintiff together with interest thereon at the rate of 7% per annum from the 18th day of November, 1932.

And for a twentieth cause of action against the defendant, plaintiff alleges:

I

That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania and engaged in the business of operating steam railroad lines as a common carrier.

II

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of California.

III

That the Southern Pacific Company is a corporation operating steam railroad lines as a common carrier.

IV

That on or about the 8th day of October, 1932, the defendant, as consignor, delivered to the Southern Pacific Company at Quality, California, a carload of grapes loaded in car PFE 32461 consigned to defendant at Omaha, Ne- [fol. 48] braska, to be shipped over the railroad lines of the Southern Pacific Company pursuant to the provisions of a uniform bill of lading executed by defendant and the Southern Pacific Company, a copy of which is attached hereto marked Exhibit No. 1, hereby referred to and made a part hereof for all purposes.

V

That thereafter upon the order of defendant said carload of grapes was diverted to Jerome Distributing Co., Inc. at Council Bluffs, Iowa; that thereafter said carload of grapes was diverted to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey.

VI

That said carload of grapes was transported over the steam railroad lines of the Southern Pacific Company, its connecting carriers and the railroad lines of the plaintiff and was delivered by the plaintiff to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey, on the 18th day of November, 1932, and that the plaintiff, the Southern Pacific Company, and its connecting carriers performed each and all of the terms and conditions of the said bill of lading on the part of the carriers to be kept and performed.

VII

That the lawful freight, refrigeration, demurrage and other charges for the transportation, handling and delivery of said carload of grapes as herein alleged in accordance with the tariffs published and filed with the Inter-State Commerce Commission pursuant to the provisions of the [fol. 49] Inter-State Commerce Act is the sum of $682.43.

VIII

That on the 25th day of October, 1935, the defendant executed and delivered to the plaintiff a waiver of the statute of limitations, a copy of which is attached hereto marked Exhibit "C", hereby referred to and made a part hereof for all purposes.

IX

That on or about the 26th day of December, 1935, in accordance with the provisions of the Inter-State Commerce Act plaintiff demanded payment of said sum of $682.43 from the defendant and the defendant definitely refused to pay said sum or any part thereof and that the said sum of $682.43 is now due, owing and unpaid from the defendant to the plaintiff together with interest thereon at the rate of 7% per annum from the 18th day of November, 1932.

And for a twenty-first cause of action against the defendant, plaintiff alleges:

I

That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania and engaged in the business of operating steam railroad lines as a common carrier.

II

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of California.

[fol. 50]

III

That the Southern Pacific Company is a corporation operating steam railroad lines as a common carrier.

IV

That on or about the 26th day of October, 1932, the defendant, as consignor, delivered to the Southern Pacific Company at Quality, California, a carload of grapes loaded in car PFE 16386 consigned to defendant at Manhattan Produce Yards, New Jersey, to be shipped over the railroad lines of the Southern Pacific Company pursuant to

the provisions of a uniform bill of lading executed by defendant and the Southern Pacific Company, a copy of which is attached hereto marked Exhibit No. 2, hereby referred to and made a part hereof for all purposes.

V

That thereafter upon the order of defendant said carload of grapes was diverted to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey.

VI

That said carload of grapes was transported over the steam railroad lines of the Southern Pacific Company, its connecting carriers and the railroad lines of the plaintiff and was delivered by the plaintiff to Jerome Distributing Co., Inc. at Manhattan Produce Yards, New Jersey, on the 9th day of November, 1932, and that the plaintiff, the Southern Pacific Company, and its connecting carriers performed each and all of the terms and conditions of the said bill of lading on the part of the carriers to be kept and performed.

[fol. 51]

VII

That the lawful freight, refrigeration, demurrage and other charges for the transportation, handling and delivery of said carload of grapes as herein alleged in accordance with the tariffs published and filed with the Inter-State Commerce Commission pursuant to the provisions of the Inter-State Commerce Act is the sum of $619.63.

VIII

That on the 25th day of October, 1935, the defendant executed and delivered to the plaintiff a waiver of the statute of limitations, a copy of which is attached hereto marked Exhibit "C", hereby referred to and made a part hereof for all purposes.

IX

That on or about the 26th day of December, 1935, in accordance with the provisions of the Inter-State Commerce Act plaintiff demanded payment of said sum of $619.63 from the defendant and the defendant definitely refused to pay said sum or any part thereof and that the

said sum of $619.63 is now due, owing and unpaid from the defendant to the plaintiff together with interest thereon at the rate of 7% per annum from the 9th day of November, 1932.

Wherefore, plaintiff prays judgment against the defendant for the sum of $13,678.86 together with interest on the sum of $1,388.06 at the rate of 7% per annum from the 28th day of October, 1932; interest on the sum of $2,564.02 from the 1st day of November, 1932, at the rate of 7% per annum; interest on the sum of $617.58 from [fol. 52] the 2nd day of November, 1932, at the rate of 7% per annum; interest on the sum of $619.63 from the 9th day of November, 1932, at the rate of 7% per annum; interest on the sum of $579.03 from the 17th day of November, 1932, at the rate of 7% per annum; interest on the sum of $5,374.94 from the 18th day of November, 1932, at the rate of 7% per annum; interest on the sum of $695.51 from the 19th day of November, 1932, at the rate of 7% per annum; interest on the sum of $1,250.76 from the 21st day of November, 1932, at the rate of 7% per annum; interest on the sum of $589.38 from the 22nd day of November, 1932, at the rate of 7% per annum; and for plaintiff's costs of suit.

W. H. Stammer, Attorney for Plaintiff.

[fol. 53] [File endorsement omitted.]

Duly sworn to by W. H. Stammer. Jurat omitted in printing.

(Here follows 2 photolithographs, side folios 53a-53b)